

EXHIBIT 88

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND**

STATE OF NEW YORK, et al.,

Plaintiffs,

v.

ROBERT F. KENNEDY, JR., in his official
capacity as SECRETARY OF THE U.S.
DEPARTMENT OF HEALTH AND HUMAN
SERVICES, et al.,

Defendants.

Case No. 1:25-cv-00196-MRD-PAS

SUPPLEMENTAL DECLARATION OF MICHELLE DAVIS

1. I, Michelle Davis, am the Deputy Commissioner of the Office of Public Health (OPH), within the New York State Department of Health (DOH). I am familiar with the information in the statements set forth below either through personal knowledge, in consultation with DOH staff, or from documents that have been provided to and reviewed by me.

2. I submit this Declaration in support of Plaintiffs' Opposition to Defendants' Motion to Clarify and Modify the Preliminary Injunction Order. ECF No. 75.

3. This Declaration supplements my previously filed Declaration of May 7, 2025. ECF No. 44-37. I reincorporate and restate the substance of that declaration, and provide updated information about how the changes to the Centers for Disease Control and Prevention's (CDC) Office on Smoking and Health (OSH) and U.S. Food and Drug Administration's (FDA) Center for Tobacco Products (CTP) have impacted DOH's Tobacco Control Program.

4. In the two months since the previous Declaration was filed with the court, there has been no change in the interactions between DOH's Bureau of Tobacco Control employees

and U.S. Department of Health and Human Services (HHS) employees, specifically those within OSH. To our knowledge, that office remains unstaffed and/or dismantled due to the April 1 reductions in force (RIFs).

5. DOH's Bureau of Tobacco Control attempted to contact CDC's Media Campaign Resource Center (MCRC), who is currently not accepting orders through their website, to seek guidance on the proper licensing of an advertisement for the 2025–2026 media year. To that end, DOH staff emailed ICF Next, CDC's manager of the MCRC, on June 30, 2025, with questions and, to date, have not received a response. A true and correct copy of the June 30, 2025, email to MCRC is attached hereto as **Exhibit A**.

6. Further, on Tuesday, July 15, 2025, at 3:22 PM EST, the CDC issued an announcement via GrantSolutions (FY25 DP20-2001 Supplemented Extension Guidance) regarding a one-time supplemental funding opportunity to the recipients currently funded under CDC-RFA-DP20-2001: National and State Tobacco Control Program to support the implementation of the National and State Tobacco Control Program. A true and correct copy of the July 15, 2025, 3:22 PM EST announcement is attached hereto as **Exhibit B**. This announcement included an attachment that did not work and was re-issued with a corrected attachment at 5:35 PM EST on the same day. A true and correct copy of the July 15, 2025, 5:35 PM EST announcement is attached hereto as **Exhibit C**, and its attachment, entitled "Supplemented Extension" is available as **Exhibit D**.

7. It is unclear from Exhibit D what the timing is for the supplemental funding, when a notice of award will be issued, and whether this supplemental funding will allow the program to recruit or retain additional staffing positions. In short, there is no way to know when the additional funding would become available, or how DOH could plan to use it.

8. Due to the April 1 RIFs and subsequent lack of continuation funding for the National Tobacco Control Program, DOH's Tobacco Control Program has lost 10 full-time staff positions, and three staff impacted by the layoffs were shifted to temporary funding.

9. I, Michelle Davis, declare under the penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Date: 7/25/25

Michelle S. Davis

MICHELLE DAVIS

EXHIBIT A

From: [Courtney, Matthew \(HEALTH\)](#)
To: [Baker, Brittney](#); [Linkins, Tyler](#)
Cc: [O'Sullivan, Gina M \(HEALTH\)](#)
Subject: Nicotine Equals Licensing for NYS Use
Date: Monday, June 30, 2025 3:19:56 PM

Hi Brittney & Tyler,

Hope you both are doing well and enjoying your summer! It seemed to be constant rain here in NY, then followed by an oppressive heat wave, and then finally this past weekend it was beautiful out and felt more like summer.

I am reaching out to you both seeking any guidance or assistance in the proper licensing for NYS to use the Nicotine Equals ad: 'The Fallout' and 'The Unraveling' for our upcoming 25-26 media year. From what I found in older emails, the talent fees were covered by California until 05/06/2027 but I believe the 'Future Prefect' music license was something we only had for a 52 week cycle.

We understand that the MCRC is unable to process orders currently but if you have any information regarding this licensing, that would be a huge help!

Thank you so much and I look forward to hearing from you.

Sincerely,

Matt

Matthew Courtney

Health Communications Associate, Bureau of Tobacco Control

New York State Department of Health

Empire State Plaza, Corning Tower, room 1055

Albany, NY 12237

Phone: (518) 474-1515 | matthew.courtney@health.ny.gov

EXHIBIT B




View / Reply to Grant Message



Subject: Subject: FY25 DP20-2001 Supplemented Extension Guidance

Communication Type: Correspondence  **Category:** Bulk Message

AUTHOR	MESSAGE	DATE / TIME	ACTIONS
Darryl Mitchell	Dear Recipient, Attached is the guidance for applying for the additional funding available to the current CDC-RFA-DP20-2001 recipients to support the implementation of the National and State Tobacco Control Program. Should you have any questions, please feel free to reach out to your assigned Grants Management Specialist or Project Officer. Thank you	07/15/2025 03:22 PM EST	
Gina OSullivan	Good afternoon, I cannot open the attachment.	07/15/2025 03:37 PM EST	

Add Reply

View / Reply to Grant Message

Subject: Subject: FY25 DP20-2001 Supplemented Extension Guidance

Communication Type: Correspondence

Category: Bulk Message

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EXHIBIT C




View / Reply to Grant Message



Subject: FY25 DP20-2001 Supplemented Extension Guidance

Communication Type: Correspondence  **Category:** Bulk Message

AUTHOR	MESSAGE	DATE / TIME	ACTIONS
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View / Reply to Grant Message

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EXHIBIT D

Supplemented Extension

Centers for Disease Control and Prevention (CDC)
Office of Financial Resources
Catalog of Federal Domestic Assistance (CFDA): 93.387
Notice of Funding Opportunity Number (NOFO): CDC-RFA-DP20-2001

National and State Tobacco Control Program

National Center for Chronic Disease Prevention and Health Promotion
Office on Smoking and Health

Purpose:

The purpose of this supplement is to announce that additional funding is available to the current CDC-RFA-DP20-2001 recipients to support the implementation of the *National and State Tobacco Control Program*.

The supplement will fund this cooperative agreement for an additional 12 months (April 29, 2025 – April 28, 2026) to allow for completion of program activities and extended evaluation of the program.

Eligibility:

These one-time funds will be awarded to the recipients currently funded under **CDC-RFA-DP20-2001: National and State Tobacco Control Program**.

Anticipated Funding Level:

For this award, recipients are required to prepare their fiscal year 25 budget based on the current year's award amount. Please refer to the most recent Notice of Award for the award amount.

Application Submission:

Applications must be submitted through www.grantsolutions.gov as an amendment following the steps below:

1. **Go to:** www.grantsolutions.gov
2. **Access:** My Grants List Screen
3. **Click the Link:** "Manage Amendments"
4. **Click Button:** "New"
5. **Select Amendment Type:** Supplement
6. **Click Button:** "Create Amendment"

Applications must be submitted to GrantSolutions by Monday, July 21, 2025, 11:59 p.m. Eastern Standard Time. If you encounter any difficulties submitting your application at www.grantsolutions.gov, please contact the GrantSolutions helpdesk at 866-577-0771 or email help@grantsolutions.gov prior to the submission deadline. If you need further information regarding the supplemented extension, please contact Darryl Mitchell, Grants Management Specialist, at dvm1@cdc.gov and Keisha Thompson at dwt2@cdc.gov. For programmatic information, please contact Leslie Norman, Project Officer, at lanO@cdc.gov.

Annual Reporting Requirements:

- **Progress Performance Report:** Due to the extension of the final budget period, CDC must receive Annual Progress Reports (APR) every 12 months. Recipients are required to submit an APR for reporting period **January 1, 2024 – December 31, 2024**. The APR must be submitted with this supplement application.

- **Annual Federal Financial Report (FFR):** Annual financial reporting is required every twelve-month period. Due to the extension period, the final budget period has been extended and an additional annual financial report will be required. A completed FFR SF- 425 covering the original final budget period of April 29, 2024 – April 28, 2025 is due to the GMS/GMO by **July 28, 2025**. The report must be submitted in the Payment Management System (PMS).

Checklist of required contents of application packet:

1. [Performance Progress and Monitoring Report \(PPMR\)](#)
2. SF-424 Application for Federal Domestic Assistance Version 3 (online form)
3. SF-424A Budget Information-Non-Construction (online form) and Budget Justification (attachment)
4. Indirect Cost Rate Agreement (attachment)
5. Performance Narrative
6. SF-LLL Disclosure of Lobbying Activities (online form and instructions), if applicable^[1], are located at www.grants.gov/forms/forms-repository/post-award-reporting-forms
7. Interim Federal Financial Report (FFR) SF-425 (if applicable) instructions are located at www.grants.gov/forms/forms-repository/post-award-reporting-forms
8. Additional Program Requirements, if applicable

1. Performance Progress and Monitoring Report:

- PPMR instructions are attached to the form located at PPMR <https://www.cdc.gov/grants/documents/Performance-Progress-and-Monitoring-Report-PPMR.pdf>.

2. SF-424 Application for Federal Domestic Assistance-Version 2:

- Instructions for completing SF-424 Application for Federal Domestic Assistance Version 3 https://www.grantsolutions.gov/gs/pdf/SF424V3_Instructions.pdf

3. SF-424A Budget Information and Justification:

- Instructions for completing SF-424A Budget Information-Non-Construction online form are located at https://www.grantsolutions.gov/gs/pdf/ophs-1_SF424A_Instruction.pdf
- The proposed supplement budget should be based on the federal funding level, which is stated on page one of this document.
- In a separate narrative, provide a detailed, line-item budget justification of the funding amount requested to support the activities to be carried out with those funds. Travel for program implementation should be justified and related to implementation activities.
- The budget justification must be prepared in the general form, format, and to the level of detail described in the CDC Budget Preparation Guidelines. The budget guidance is provided on CDC's internet at <http://www.cdc.gov/grants/applying/application-resources.html>.
- For any new, proposed subcontracts, provide the information specified in the Budget Guidance.
- When non-federal matching is required, provide a line-item list of non-federal contributions including source, amount, and/or value of third-party contributions proposed to meet a matching requirement.

4. Indirect Cost Rate Agreement (This is not applicable to institutions of higher education. The rates stay the same as the first-year award.):

- A. If indirect costs are requested, include a copy of the current negotiated federal indirect cost rate agreement or a cost allocation plan approval letter for those recipients under such a plan.

^[1] The form has instructions that indicate when the form is required.

- B. Clearly describe the method used to calculate indirect costs. Make sure the method is consistent with the Indirect Cost Rate Agreement.
- C. To be entitled to use indirect cost rates, a rate agreement must be in effect at the start of the budget period.
- D. If there is no Indirect Cost Rate Agreement or the agreement has expired, indirect costs may be charged as direct if (1) this practice is consistent with the recipient's/applicant's approved accounting practices; and (2) if the costs are adequately supported and justified.
- E. If applicable, attach and name the document, "Indirect Cost Rate."
- F. If applicable, the recipient's indirect costs are based on a rate of ten percent of modified total direct costs (MTDC) as defined in 45 CFR Part 75.2.
- G. For institutions of higher education, indirect costs are based on the negotiated indirect cost rate agreement used for the first-year award, and rates in that agreement are to be used for the remainder of the competitive segment in accordance with 45 CFR Part 75. Indirect cost/facilities and administration rates for subcontracts will be treated in the same manner as those for the recipient if the subcontractor is covered by 45 CFR Part 75.
- H. For grants awarded to foreign organizations and foreign public entities and performed fully outside of the territorial limits of the U.S., indirect costs are based on a fixed rate of eight percent of MTDC exclusive of tuition and related fees, direct expenditures for equipment, and subawards in excess of \$25,000.

4. Performance Narrative:

Section I. Current Budget Period Progress (January 1, 2024 – December 31, 2024):

Provide a brief report addressing the following elements of each objective or activity.

Annual Progress Report (Component 1 and Component 2): Recipients must provide a brief summary for Component 1 and/or Component 2 of key deliverables conducted thus far, successes, challenges, and technical assistance needs for each Strategy. The Annual Progress Reports should be labeled as follows: "Component 1 APR", and "Component 2 APR" for submission to GrantSolutions.

- **Successes**
 - Report progress on completing deliverables, activities, and logic model outcomes outlined in the Component 1 and Component 2 work plans. Progress should be measurable and demonstrate impact.
 - Highlight successes with implementing evidence-based policy, systems, and environmental strategies during the budget period.
 - Describe any additional successes (e.g., identified through evaluation results or lessons learned) achieved during the budget period.
- **Challenges**
 - Describe challenges that might affect their ability to achieve selected strategies, conduct performance measures, or complete the activities in the work plan.
 - Discuss additional challenges (e.g., identified through evaluations or lessons learned) encountered in the past year.
 - Describe how CDC could help overcome challenges to achieving strategies, performance measures, and completing activities outlined in the work plan.
- **Lessons Learned**
 - Provide lessons learned under each Strategy for the Population-Specific Disparities Requirements (Statewide, Community-Based, and Preventing Initiation of Emerging Tobacco Products). Do not repeat what was provided under Successes and Challenges.

- **Spend Plan for Activities brought forward from previous budget periods (Carryover)** - In order to assess programmatic plans to address unobligated funds, please include the following information in a separate document. The information should detail the activities/funding brought forward from previous budget periods (Year 4) into the current budget period (Year 5). Name the document "Spend Plan for use/intended use of unobligated".
- A breakdown of the amount of unobligated funds by component brought forward from previous budget periods into the current budget period.
- Detailed plans for the use of or intended use of the unobligated funds carried forward into the current budget period.
- Categorize the information by Component/strategy/activity, with the associated dollar amounts.
- Include overhead, administration, and/or staffing costs as appropriate.

Section II. Supplemental Budget Period Proposed Objectives and Activities (April 29, 2025 – April 28, 2026):

CDC recommends that recipients develop the work plan and budget concurrently, making sure the activities identified in the work plan are reflected in the budget and vice versa. Recipients are expected to clearly explain how their organization plans to use the funding to implement the NOFO strategies and achieve performance measure targets. Each activity listed in the work plan should be attached to an expenditure in the budget, and recipients are required to justify and itemize all expenditures.

Work Plan: Recipients should update their Year 5 Work Plan(s) for Component 1 and/or Component 2 to describe the work that will be accomplished during the supplemental performance period. The work plans should be labeled as follows for submission to GrantSolutions: "Component 1 Work Plan" and "Component 2 Work Plan".

- Select proposed strategies for the upcoming budget period. The strategies must support the intent of the original Notice of Funding Opportunity (NOFO).
- Each strategy should contain a performance or outcome measure that assesses the effectiveness of the project.
- For each Strategy:
 - Identify the priority population, geographic area, and key deliverables/outputs proposed.
 - Use the exact names provided in the table for the priority populations.
 - Do not select both "general population" and other population groups.
 - Only use "Other" if the selected priority population is not listed in the table.
- List activities that will be implemented, include the setting the activity is being implemented, the contributing partner(s), and the key contractors and consultants responsible for completing each activity; and
- Provide a timeline for accomplishment of activities.

Priority Populations	
• General Population	• Mental Health
• African American or Black	• Substance Use
• American Indian or Alaska Native	• Rural
• Asian American, Native Hawaiian, or Pacific Islander	• Veteran/Active Military

• Disability/Limitation	• Geographical Region or Area with High Commercial Tobacco Use
• Hispanic/Latino	• Young Adults (18-24)
• LGBTQ+	• Youth (below 18)
• Low SES	• Other (include in description)

Budget Narrative: Recipients must submit a separate 12-month budget for Component 1 and/or Component 2. The budgets should be labeled as follows: "Component 1 Budget" and "Component 2 Budget".

- **Direct Assistance:** Direct Assistance is available through this NOFO for Statistical Analysis Software (SAS) licenses and SUDAAN licenses.
- **Trainings and Conferences:** Attending required trainings and conferences is critical for building and maintaining the skills of the staff with responsibility for carrying out the program requirements of this NOFO. CDC's Office on Smoking and Health (OSH) requires attendance at specific trainings and conferences as a term and condition of this award. Specific conference dates, location, and guidance related to travel will be provided at a later date.
 - Recipients should budget for a minimum of three staff members to attend the National Tobacco Control Program Technical Assistance Meeting, August 25, 2025, and the National Conference on Tobacco or Health (NCTOH), August 26-28, 2025, in Chicago, Illinois. Staff members should include, at minimum, the tobacco control program manager and evaluator.
- **Local Lead Agency:** For the Community-Based Disparities Requirement, recipients must allocate funds from their Component 1 award or state dollars to fund one local lead agency to implement tobacco control strategies and activities in a community. The Local Lead Agency should be funded at an amount that will allow them to accomplish the strategies and activities outlined in their work plan. A line item should be included in the budget and labeled "Local Lead Agency" with the Name of Organization in parenthesis (i.e., Local Lead Agency (ABC Organization)).

5. Additional Program Requirements

Impact Statements: Recipients must develop and submit at least 1 impact statement with the application. Impact Statements should be 1 page or less and include the following information:

- Burden/problem statement/priority population
- What your state/jurisdiction is doing (including timeframe - start and end date of highlighted activities)?
- How your state/jurisdiction used CDC resources to do the work?
- What happened?
- What was the impact/health outcomes (include numerical data if available, including number and percent impacted)?

The Impact Statement should be submitted as a separate attachment with the Application and labeled "Impact Statement State Abbreviation".

Community-Based Disparities Requirement: Recipients should continue to collaborate with the local lead agency, coalition, and community stakeholders to advance the work of this requirement. Activities may include one or more of the following:

- Implement a workplan with culturally appropriate tobacco control policy, systems, and environmental strategies and activities which seek to improve health equity and is led by the local lead agency and community.

- Evaluate the requirement and share findings.
- Provide technical assistance, training, and guidance to the local lead agency.

A work plan should be submitted as a separate attachment with the Application and labeled “Local Lead Agency Work Plan”.

Evaluation and Performance Measurements: Recipients are required to collect and report on evaluation results and performance measures.

- **Performance Measurement Reports:** Recipients are required to report relevant performance measure data annually. The performance measures for DP20-2001 standardize the assessment of strategies and outcomes across the funded tobacco control programs. Recipients will update their Performance Measurement Reports by submitting measurement data for Year 5 and performance measure targets for Year 6. The Performance Measurement Reports should adhere to the evaluation report guidance provided by OSH, titled “Guidance for Updating DP20-2001 Annual Performance Measures.” The report must be submitted by July 28, 2025.
- **Evaluation Report:** Recipients are required to implement evaluation plans and collect evaluation data annually. Recipients will report evaluation findings from Year 4 and Year 5 together. The report must be submitted by July 28, 2025.
- **Updated Evaluation Plan:** If updates or revisions have been made by the recipient or requested by the OSH Evaluator, recipients are required to submit an updated Evaluation Plan by March 31, 2025. If there are no updates or revisions, the recipient is not required to submit an updated evaluation plan.